

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DAVID HOWARD,

Plaintiff, : C.A. No. 02-3797

v.

UNITED STATES POSTAL SERVICE,

Defendant. :

DECLARATION OF JOSEPH M. RUSER

I, JOSEPH M. RUSER, declare under penalty of perjury as follows:

1. I am a Acting Labor Relations Specialist in the Labor Relations Office of the Lancaster District of the United States Postal Service.

2. My duties and responsibilities include, but are not limited to, representing management officials from the Lancaster District of the United States Postal Service in disputes, including but not limited to grievances, arising out of collective bargaining agreements between the Postal Service and its labor organizations.

3. The terms and conditions of employment for Postal Service employees in the mailhandler craft are generally governed by the Mailhandlers National Agreement.

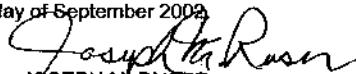
4. I am familiar with Plaintiff David Howard from reviewing the motion to dismiss and the records from the Postal Service Labor Relations Grievance Arbitration Tracking System [GATS] database. Plaintiff was a career craft level employee who worked as a mailhandler within the workforce of the Postal Service prior

to his removal. Plaintiff was a member of the Mailhandler union. The collective bargaining agreement between such employees and the Postal Service, known as the Mail Handlers National Agreement, applied to Plaintiff.

5. I have reviewed the Motion to Dismiss to which this declaration is attached. The provisions cited in the motion were in effect for each bargaining agreement with the Mailhandlers from 1996 through the present: Article 2, Section 2.1; Article 2, Section 2.3; and Article 15.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that to the best of my knowledge, information and belief that the above statements are true and correct.

EXECUTED this 6th day of September 2002.



JOSEPH M. RUSER
Acting Labor Relations Specialist
Labor Relations Office
Lancaster District
United States Postal Service

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID HOWARD,

Plaintiff, : C.A. No. 02-3797

v. :

UNITED STATES POSTAL SERVICE,

Defendant. :

DECLARATION OF FRANK JACQUETTE

I, FRANK JACQUETTE, declare under penalty of perjury as follows:

1. I am a Labor Relations Specialist at the Headquarters Labor Relations Office of the United States Postal Service in Washington D.C.

2. My duties and responsibilities include, but are not limited to, overseeing and conducting the most complex projects for the design, development, implementation, evaluation, monitoring, administration, and improvement of national labor relations programs and policies, including agreement implementation, grievance handling, arbitration, contract analysis, collective bargaining, and appeals.

3. My duties also include providing support and guidance to the labor relations representatives in the field. My team is assigned to handle matters involving the USPS- National Postal Mail Handlers' National Agreement.

4. The terms and conditions of employment for Postal Service employees in the mailhandler craft are generally governed by the USPS- National Postal Mail Handlers National Agreement.

5. According to the contract, either an employee or a union steward may initiate a grievance at step 1. Article 15.2.

6. The union may unilaterally decide whether to appeal a step one grievance to step 2, 3 or 4 of the Grievance-Arbitration procedure. Article 15.2.

7. At all times the union has the right and authority to settle any grievance, in whole or in part, with or without the consent of the individual grievant. Article 15.2.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that to the best of my knowledge, information and belief that the above statements are true and correct.

EXECUTED this 21st day of November 2002.


FRANK X. JACQUETTE III
Labor Relations Specialist
Contract Administration NRLCA/NPMHU
Headquarters
United States Postal Service

EXHIBIT "G"

CAROSELLA & FERRY, P.C.
ATTORNEYS AT LAW

October 29, 1998

Mr. Jeffrey Bergen
General Manager
Southeastern Post Office
Southeastern, PA 19399-9998

RE: David Howard, SS #166-58-0352

Dear Mr. Bergen:

This law firm represents Mr. David Howard, a U.S. Post Office employee since 1987, in his attempt to return to employment at the Southeastern Post Office location. Specifically, Mr. Howard, attempting to recover from a prior drug dependency and subsequent depression, submitted medical documentation that he was able to return to work, but should remain on day shift indefinitely.

Unfortunately, and apparently without valid justification, during May of 1997 both Mr. Frank J. Ranieri, Manager of Distribution Operations and Mr. Ting Min Kwan, Acting Plant Manager, sent letters to Mr. Howard's attention denying his request for a "revised schedule" stating that it was for personal reasons and personal convenience and therefore denied. It should be noted that both Mr. Ranieri and Mr. Kwan's letters are incorrect, in that as per the documentation submitted by Mr. Howard, the request for the revised schedule was for medical reasons.

A May 9, 1997 letter from Mr. Ranieri states "the seven previous requestswere so that you could resolve your personal problems." Again, this assumption is incorrect. Mr. Howard has submitted the following medical reports and documents concerning the need for a consistent day shift schedule:

- A January 14, 1997 note from Dr. Joseph K. Stanella stating that treatment of Mr. Howard is going well and part of his improvement is due to his being able to work on day shift, which according to Dr. Stanella "it is imperative for his continued treatment that he continue to work only on day shift. This is for medical necessity. Switching to another shift would seriously jeopardize his treatment."
- An undated letter from Dr. Stanella simply stating "Mr. David Howard continues in treatment. He continues to do well. As part of his treatment he needs to continue working on the day shift only."

Mr. Jeffrey Bergen
October 29, 1998
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- A February 4, 1997 return to work certification signed by Dr. Stanella listing the work restrictions as day shift only for at least six (6) months.
- A light duty medical statement of physical condition signed by Dr. M. H. Etezady stating that as of 9/21/96 David Howard is partially incapacitated from work.
- A January 26, 1998 duty status report signed by Dr. Etezady stating that "Mr. Howard will be able to work forty (40) hours per week. This work needs to be day shift only, with no change in his schedule."
- A June 1, 1998 Physician's Certification from Dr. Etezady stating that, as medical limitations, Mr. Howard "has to be on day shift only."
- A July 27, 1998 note from Dr. Etezady stating that David Howard may return to work and "please note that unless Mr. Howard works on a day shift his treatment and present state of stability will be at risk."

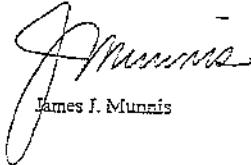
In spite of these many medical documents submitted on behalf of Mr. Howard, letters from Mr. Ranieri and from the Distribution Operations indicate that Mr. Howard is being separated from the employ of the Postal Service because of the "inability to perform the duties of your position." This is patently untrue, as is obviously shown in the medical documents listed above.

Mr. Howard has attempted to bring a grievance in this matter but the step process of the grievance has been untimely. As of the date of this letter, Mr. Howard has been out of work for over sixteen (16) months and has no health insurance. He has continually attempted to return to work during this period. Both Mr. Howard's statements and medical documentation show that he is ready, willing and able to return to work. He is and has been able to perform the duties of his position as a mail handler. The only reasonable accommodation requested is for day shift, which is for medical reasons. Additionally, this accommodation is not permanent but rather indefinite. I find it ironic that casuals work during the day, yet you state that you are unable to accommodate Mr. Howard.

Mr. Jeffrey Bergau
October 29, 1998
page 3

While step four of the grievance is certainly untimely, it should be noted that Mr. Howard merely wants to be returned to work with back pay. Please act in good faith and reinstate Mr. David Howard and pay him back wages for the time that he was wrongfully terminated. I would ask that you provide an answer to this reinstatement request to my attention and no later than thirty (30) days, that is, by November 29, 1998. Thank you for your expected cooperation in this matter.

Very truly yours,



James J. Munns

JJM/jb

cc: D. Howard
cc: F. Phillips

EXHIBIT "J"



01 EFFECTIVE DATE 05-02-2002	02 SOCIAL SECURITY NUMBER 166-38-0322
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Notification of Personnel Action

EMPLOYEE INFORMATION

03 EMPLOYEE NAME-LAST HOWARD	39 FLSA STATUS N - NON-EXEMPT
04 EMPLOYEE NAME-FIRST DAVID	40 PAY LOCATION 102
05 EMPLOYEE NAME-MIDDLE A	41 RURAL CARRIER-ROUTE
06 MAILING ADDRESS 422 FORGE LN STREET/BOX/APT	42 RURAL CARRIER-ID
07 MAILING ADDRESS-CITY EXTON	43 RURAL CARRIER-PAY TYPE
08 MAILING ADDRESS-STATE PA	44 RURAL CARRIER-WEEKLY
09 MAILING ADDRESS-ZIP+4 15141-1816	45 RURAL CARRIER-1A
10 DATE OF BIRTH 04-07-1965	46 RURAL CARRIER-COMMIT
11 WORKING PREFERENCE 1 - NO PREFERENCE	47 RURAL CARRIER-2A
12 SEX M	48 RURAL CARRIER-HOURS 00
13 INCUBITY 05	49 RURAL CARRIER-MILES 000
14 LEAVE COMB DATE 12-31-1988	50 RURAL SEQUENCE 1
15 ENTER ON DUTY DATE 12-31-1988	51 OCCUPATION CODE 2315-01XX
16 RETIREMENT COMP DATE 12-31-1988	52 POSITION TITLE MAIL HANDLER
17 SERV ANNIVERSARY BYR 02-1969	53 FUNCTIONAL OPER-NER 1700
18 TSP ELIGIBILITY Y - ELIGIBLE WITH DEDUCT	54 DESIGNATION/ACTIVITY 120
19 TSP SERVICE COMP DATE 12-31-1988	55 POSITION TYPE F - FULL TIME
20 PRIOR 3 yrs SERVICE N	56 LIMIT HOURS 00
21 FROZEN CARS TIME	57 ALLOWANCE CODE
22 LEAVE DATA-CATEGORY 6 - HOURS/PP	58 EMPLOYMENT TYPE
23 LEAVE DATA-CHG PYR 03-2004	59 PAY RATE CODE 1A - ANNUAL RATE
24 LEAVE DATA-TYPE 1 - ADVANCED AT BEGINNING	60 PAY SCHEDULE CODE M - MAIL HANDLERS
25 CREDIT MILITARY SERV	61 GRADE/STEP 04/K
26 RETIRED MILITARY	62 BASE SALARY 37,575
27 RETIREMENT PLAN 6 - FEES	63 COLA 12%
28 EMPLOYEE STATUS	64 COLA FOLL/IN/NO
29 LIFE INSURANCE CO - Basic Only	65 NEXT STEP PYR 17-2002
30 SPECIAL BENEFITS	66 MERIT ANNIV DATE
31 POSITION INFORMATION	67 MERIT LUMP SUM
32 EMPLOY OFFICE-FIN NO 41-1627	68 SPECIAL SALARY CODE
33 EMPLOY OFFICE-NAME SOUTHEASTERN POST OFFICE	69 PROTECTED FSC
34 EMPLOY OFFICE-ADDRESS PA 15339-5994	70 PROTECTED GRADE/STEP
35 DUTY STATION-FIN NO 41-1627	71 EXPIRATION PERIOD
36 DUTY STATION-NAME SOUTHEASTERN POST OFFICE	72 PROTECTED RC HOURS
37 APPT EXPIRATION DATE	73 PROTECTED RC MILES
38 INDICATION EXP DATE	74 RC GUARANTEED SALARY

NATURE OF PERSONNEL ACTION

77 NATURE OF ACTION CODE J26	78 AUTHORITY 05-16-1997	79 JSC SMC 100
79 DESCRIPTION SEPARATION-DISABILITY	80 CODE 1922 141 10008 1924 0210008	81 CODE 1988
84 REMARKS	July 11-02	

LAST DAY IN PAY STATUS 05-16-1997
 EMPLOYEE TO BE PAID FOR ALL ACCUMULATED LEAVE TO WHICH ENTITLED UNDE
 A EXISTING LAW.
 SF & TSP WITHDRAWAL PACKAGE GIVEN TO EMPLOYEE
 GRIEVANCE SETTLEMENT CSAM-1C-C-980002104 EEOQ 170-A1-8053X
 & AGENCY # 10-195-0023-98 JLC 05162002

85 AUTHORIZATION GARY L MCDOUGAL, VP AREA OPERATIONS-ALLENTOWN AREA	86 PROCESSED DATE 05-23-2002
87 PERSONNEL OFFICE ID MFA9	88 OFF LOCATION SOUTHEASTERN POST OFFICE

UNITED STATES POSTAL SERVICE
SOUTHEASTERN POST OFFICE
1000 W VALLEY RD
SOUTHEASTERN, PA 19359-9994

DAVID A HOWARD
422 FORGE LN
EXTON, PA 19341-1816
~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

**CONDITIONS PERTINENT TO ALL TYPES
OF PERSONNEL ACTIONS**

The personnel action identified on the enclosed form, Notification of Personnel Action, is subject to all applicable laws, rules and regulations governing employment with the U. S. Postal Service. The action may be corrected or cancelled if not in accordance with all legal or regulatory requirements, or if based upon your misrepresentation or fraud.

In addition, the level of the position to which you are officially assigned may be reviewed and corrected by your personnel office.

INFORMATION ABOUT APPOINTMENTS

The Postal Service places most positions in the "Postal Career Service." The Postal Service sets qualification requirements and controls recruitment for such positions. As a general rule, persons selected from Postal Service registers to fill continuing jobs are given career appointments. Such appointments are secured through direct competition with other members of the general public seeking similar work.

During an indicated probationary period, an appointee must demonstrate his/her full competence and fitness for employment. Transfers, promotions, demotions and reassignments during a probationary period are subject to completion of probation.

Temporary or casual appointments do not confer career status and do not lead to a career appointment without some further examination or qualification. Temporary or casual appointments are made when there is no continuing need for a person's service, regardless of the manner in which he/she qualified for appointment. Acceptance of such appointment will not remove a person's name from an employment register on which he/she may later be reached for career appointment.

An employee in the Postal Career Service may transfer non-competitively to a career civil service position in another Federal agency under certain conditions. The personnel office of the Federal agency to which you are seeking a transfer will explain the requirements.

**INFORMATION ABOUT YOUR STATUS
AFTER SEPARATION**

If you are separated or placed in a nonpay status for an extended period, your personnel office will furnish you with Standard Form 8 explaining your rights for unemployment insurance benefits. If you were covered by retirement or other benefit programs, you have previously been furnished information about those programs which describes your rights and possible benefits after separation. References for major programs are as follows:

CSRS: ELM 580
FEAS: Booklet RI 90-1
PEGU: Booklet RI 75-20
FERS: FERS Guide RI 70-2 IN (Career Postal Service Office of Inspector General Employees and Inspectors)
FERS Guide RI 70-2 (Other Career Postal Service Employees)
FERS Guide RI 70-8 PS (Certain Temporary/Noncareer Postal Service Employees)

Under a provision of the health benefits program, most employees have the option to continue their health insurance coverage at their own expense for a temporary period of time after separation. If you are not retiring with eligibility for health benefits, and you are interested in temporary continuation of health insurance coverage, see your personnel office for further information.

You will be given any lump sum payment that may be due you for annual leave at the time of separation. Refund of an appropriate portion of this payment will be required if you are reemployed in a Federal agency in a position under the same leave system during the period covered by such payment.

AVAILABILITY OF FURTHER INFORMATION

Consult your supervisor if you have questions about the above statements or the entries on the front of this form. If your questions are technical, your supervisor may refer you to your personnel office, which will have copies of Postal Service manuals and regulations, as well as your individual record, and can then best explain how they apply in your case.



01 EFFECTIVE DATE 05-02-2002	02 SOCIAL SECURITY NUMBER 166-53-0352
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Notification of Personnel Action

EMPLOYEE INFORMATION	
03 EMPLOYEE NAME-LAST HOWARD	39 FLSA STATUS N - NON-EXEMPT
04 EMPLOYEE NAME-FIRST DAVID	40 PAY LOCATION 02
05 EMPLOYEE NAME-MIDDLE A	41 RURAL CARRIER ROUTE
06 MAILING ADDRESS 422 FORGE LN STREET/BOX/APT	42 RURAL CARRIER ROUTE ID
07 MAILING ADDRESS-CITY LEXTON	43 RURAL CARRIER PAY TYPE
08 MAILING ADDRESS-STATE PA	44 RURAL CARRIER PAY WEEKLY
09 MAILING ADDRESS-ZIP+4 15341-1816	45 RURAL CARRIER PAY
10 DATE OF BIRTH 04-07-1963	46 RURAL CARRIER PAY
11 VETERANS PREFERENCE I - NO PREFERENCE	47 RURAL CARRIER PAY
12 SEX M	48 RURAL CARRIER PAY
13 MINORITY E - WHITE, NON-HISPANIC	49 RURAL CARRIER PAY
14 DISABILITY 05	50 RURAL CARRIER PAY
15 LEAVE COMP DATE 12-31-1988	51 JOB SEQUENCE 1
16 ENTER ON DUTY DATE 12-31-1988	52 LOCATION CODE 235-01XX
17 RETIREMENT COMP DATE 12-31-1988	53 POSITION TITLE MAIL HANDLER
18 SERV ANNIVERSARY PYR 02-1963	54 FUNCTIONAL OPERATOR 1700
19 FSP ELIGIBILITY E - ELIGIBLE W/ DEDUCT	55 POSITION CONTRACTIVITY 1200
20 FSP SERVICE COMP DATE 12-31-1988	56 FULL TIME HOURS 80
21 PRIOR CTRS SERVICE N	57 ALLOWANCE CODE
22 FROZEN CTRS TIME	58 EMPLOYMENT TYPE
23 LEAVE DATA-CATEGORY 16 - HOURS/PP	59 SALARY INFORMATION
24 LEAVE DATA-CHG PYR 02-2002	60 PAY RATE CODE 14 - ANNUAL RATE
25 LEAVE DATA-TYPE I1 - ADVANCE AT BEGINNING	61 RATE SCHEDULE CODE IM - MAIL HANDLERS
26 CREDIT MILITARY SERV	62 GRADE/STEP 04/K
27 RETIRES MILITARY	63 BASE SALARY 37,315
28 RETIREMENT PLAN R - FERS	64 COLA 65 COLA ROLLING IN 66 NEXT STEP PAY 17-2002
29 EMPLOYEE STATUS	67 INERIT ANNIV DATE
30 LIFE INSURANCE CO - Basic Only	68 INERIT JUMP SWY
31 SPECIAL BENEFITS	69 SPECIAL SALARY CODE
32 POSITION INFORMATION	70 PROTECTED ASG
33 EMPLOY OFFICE-FIN NO 41-1627	71 PROTECTED GRADE/STEP
34 EMPLOY OFFICE-NAME SOUTHEASTERN POST OFFICE	72 EXPIRATION PAYR
35 DUTY STATION-FIN NO 41-1627	73 PROTECTED FC-HOURS
36 DUTY STATION-NAME SOUTHEASTERN POST OFFICE	74 PROTECTED FC-MILES
37 APPROX EXPIRATION DATE	75 FC GUARANTEED SALARY
38 PROSATION EXPIR DATE	76 FC ANNUITY AMOUNT
	77 RED CIRCLE CODE 0

NATURE OF PERSONNEL ACTION	
77 NATURE OF ACTION CODE 150	78 AUTHORITY F/USC Sect 1001
79 DESCRIPTION REACTIVATE	80 CODE 1 81 CODE 2 82 CODE 3 83 CODE 4
84 REMARKS	

CANCELS NOA 326 EFFECTIVE 2002-05-02.
 USER ID = EB0002 - 2002-05-29.
 CANCELLED TO CORRECT LOIPS

85 AUTHORIZATION GARY L MCCURDY, VP AREA OPERATIONS-ALLENTOWN AREA	86 PROCESSED DATE 05-29-2002
	87 PERSONNEL OFFICE ID MF49
	88 OPR LOCATION SOUTHEASTERN POST OFFICE

EXHIBIT "L"

SOUTHEASTERN PROCESSING & DISTRIBUTION CENTER



February 12, 1997

To: David Howard

The medical information which you provided places specific limitations on the duties you may perform.

Based upon these restriction and in accordance with Article 13 of the National Agreement between the United States Postal Service and the Mail Handler's Union, the following light/limited duty assignment is appropriate: Letter Tray Breakdown

This assignment may be modified in accordance with the needs of the service and your medical limitations. This temporary light/limited duty assignment will be reviewed at the expiration of your current medical information or any of the time as deemed appropriate by management. You are required to update your light/limited duty request every thirty (30) days and notify management if your medical limitations are changed or modified in any way.

Effective Saturday, February 15, 1997, your schedule for the duration of the light/limited duty assignment will be as follows. You are expected to return to your bid position on March 15, 1997.

Hours: 07:00 - 15:30
Non-scheduled days: TU/W/E

Employee Signature: _____ Date: _____

A handwritten signature of Frank J. Apelian.
Frank J. Apelian
Senior Manager, Distribution Operations

1000 W. VALLEY ROAD
SOUTHEASTERN PA 19338-6241

TEL: 810-884-6429